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PATENT
Customer No. 40271
New Attorney Docket No. 0023.0017

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
)
Wilmer L. SIBBITT, Jr.) Group Art Unit: 3763
)
Application No.: 10/693,082) Examiner: Cris Rodriguez
)
Filed: October 27, 2003)
)
For: COLORFUL SHIELDED)
RECIPROCATING BUTTERFLY)
NEEDLE)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

RESPONSE TO ELECTION OF SPECIES REQUIREMENT

In the Office Action mailed October 17, 2005, the Examiner required an election under 35 U.S.C. § 121 between the following alleged species:

- Species 1: Figure(s) 2A;
- Species 2: Figure(s) 2B;
- Species 3: Figure(s) 2C;
- Species 4: Figure(s) 2D;
- Species 5: Figure(s) 3A;
- Species 6: Figure(s) 3B;
- Species 7: Figure(s) 3C;
- Species 8: Figure(s) 3D;
- Species 9: Figure(s) 4A;

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Species 10: Figure(s) 4B;
Species 11: Figure(s) 4C;
Species 12: Figure(s) 4D;
Species 13: Figure(s) 5A;
Species 14: Figure(s) 5B;
Species 15: Figure(s) 5C;
Species 16: Figure(s) 5D;
Species 17: Figure(s) 5E;
Species 18: Figure(s) 5F;
Species 19: Figure(s) 5G;
Species 20: Figure(s) 5H;
Species 21: Figure(s) 5I;
Species 22: Figure(s) 6;
Species 23: Figure(s) 7;
Species 24: Figure(s) 8A-9B;
Species 25: Figure(s) 10A;
Species 26: Figure(s) 10B;
Species 27: Figure(s) 10C;
Species 28: Figure(s) 10D;
Species 29: Figure(s) 10E;
Species 30: Figure(s) 10F;
Species 31: Figure(s) 11A-12B;
Species 32: Figure(s) 13A-14B;

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Species 33: Figure(s) 15A-15B;
Species 34: Figure(s) 15C-15D;
Species 35: Figure(s) 15E-15F;
Species 36: Figure(s) 16A;
Species 37: Figure(s) 16B;
Species 38: Figure(s) 16C;
Species 39: Figure(s) 16D;
Species 40: Figure(s) 16E;
Species 41: Figure(s) 16F-16G;
Species 42: Figure(s) 16H-16I; and
Species 43: Figure(s) 16J-16K.

Applicant provisionally elects to prosecute the species shown in FIGS. 11A-12B, **with traverse**. Claims 27-60 are readable on the elected species. At least claims 27 and 35 are generic.

In addition, Applicant submits that the election of species requirement is improper, not because the various alleged species are not patentably distinct, but because the claims directed to the alleged species do not recite mutually exclusive characteristics of the alleged species. For example, the exemplary butterfly arrangements shown in FIGS. 2A-5I may be used with any of the exemplary butterfly needle assemblies shown in FIGS. 8A-9B and 11A-14B. Moreover, many of the pending claims recite the features of more than one of these alleged species (e.g., at least claims 1-9, 15-21, 35-43, and 49-55).

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Similarly, the exemplary adhesive devices shown in FIGS. 6 and 7 may be used with any of the exemplary butterfly needle assemblies shown in FIGS. 8A-9B and 11A-14B. Indeed, many of the pending claims recite the features of more than one of these alleged species (e.g., at least claims 1, 2, 10, 11, 22, 23, 35, 36, 44, 45, 56, 57). The exemplary adhesive devices shown in FIGS. 6 and 7 may also be used with any of the exemplary butterfly arrangements shown in FIGS. 2A-5I.

Additionally, the exemplary locking mechanisms shown in FIGS. 10A-10D, the exemplary tracks shown in FIGS. 11A-11B, the exemplary reciprocating needles shown in FIGS. 15A-15D, the exemplary slot formations shown in FIGS. 16A-16E, and the exemplary shields shown in FIGS. 16F-16K may be used with one another and/or with any of the exemplary butterfly needle assemblies shown in FIGS. 8A-9B and 11A-14B and/or any of the exemplary adhesive devices shown in FIGS. 6 and 7 and/or any of the exemplary butterfly arrangements shown in FIGS. 2A-5I.

As set forth in MPEP § 806.04(f), "claims to be restricted to different species must be mutually exclusive." As discussed above, many of the claims recite features that are found in more than one of the alleged species identified in the election of species requirement. Therefore, the claims directed to these features are not mutually exclusive. Accordingly, Applicant respectfully requests withdrawal of the outstanding election of species requirement.

In order to expedite examination of this application, Applicant provisionally elects one exemplary embodiment from each of the non-mutually exclusive alleged species discussed above. Particularly, Applicant provisionally elects the exemplary butterfly needle assembly of FIGS. 11A-12B, the exemplary butterfly arrangement of FIG. 5B,

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the exemplary adhesive device of FIG. 6, the exemplary locking mechanism of FIG. 10A and 10D, the exemplary reciprocating needle of FIG. 15A-15B, the exemplary slot formation of FIG. 16A, and the exemplary shield of FIG. 16F.

Applicant respectfully disagrees with a number of statements in the Office Action relating to the invention, the claims, and/or the related art. For example, Applicant respectfully disagrees with Examiner's assertion regarding the valve arrangements making the syringe device "a pump instead of a hand held device." Unless expressly noted otherwise, Applicant declines to subscribe to any statement or characterization in the Office Action, regardless of whether it is addressed specifically herein.

In view of the foregoing amendments and remarks, Applicant respectfully requests prompt examination of this application and timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account no. 50-2960.

Respectfully submitted,

Dated: November 16, 2005

By: 

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